

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:8-CR-75-FL
No. 5:19-CV-466-FL

CRUZ EDUARDO VALENCIA-ADATA,)	
)	
Petitioner,)	
)	
v.)	JOINT MOTION TO SET
)	BRIEFING SCHEDULE ON
)	PETITIONER'S <i>REHAIF</i> -
UNITED STATES OF AMERICA,)	BASED § 2255 MOTION
)	
Respondent.)	

Petitioner, by and through counsel of record, and Respondent, by and through the Acting United States Attorney for the Eastern District of North Carolina, jointly move the Court to enter the briefing schedule proposed below on Petitioner's motion pursuant to 28 U.S.C. § 2255 requesting *vacatur* of his conviction under 18 U.S.C. § 922(g) based on *United States v. Rehaif*, 139 S. Ct. 2191 (2019) (holding in prosecution for possession of a firearm by a restricted person under 18 U.S.C. §§ 922(g) and 924(a), the government must prove both that the defendant knew he possessed the firearm and that he knew he belonged to the relevant category of restricted persons) (hereinafter "*Rehaif*-based Section 2255 Motion"). In support of this motion, the parties submit the following:

1. Respondent previously moved to hold Petitioner's *Rehaif*-based Section 2255 Motion in abeyance pending issuance of the mandate in *United States v. Gary*, No. 18-4578, and further requested that it be allowed up to and including thirty (30)

days from issuance of the mandate in *Gary* to answer or otherwise respond to Petitioner's motion.

2. Recently, the United States Supreme Court reversed the Fourth Circuit's decision in *Gary*. *See Greer v. United States*, 593 U.S. ---, 2021 WL 2405146 (June 14, 2021) (reversing *Gary* and, *inter alia*, holding a *Rehaif* error is not structural). By letter dated June 14, 2021, the Supreme Court of the United States informed the Fourth Circuit Court of Appeals of the decision, and indicated the judgment or mandate would not issue for at least 25 days pursuant to Rule 45 of the Rules of the Supreme Court of the United States. *Gary*, No. 18-4578, [D.E. 74]. The judgment or mandate has not yet issued. Subsequently, *Gary* requested that the Fourth Circuit reopen his appeal to decide the issues previously raised on appeal but not addressed by the Court's prior opinion. *Id.*, [D.E. 75]. That motion remains pending.

3. Counsel for Respondent estimates there are approximately 175 *Rehaif*-based Section 2255 Motions pending in the Eastern District of North Carolina that have either been stayed by Court Order pursuant to Respondent's motion to stay with a response due within 30 days of the mandate being issued in *Gary* or Respondent's motion to stay is pending. Once the mandate in *Gary* is issued, Respondent anticipates filing motions to dismiss these pending *Rehaif*-based Section 2255 Motions. Respondent has already filed such a motion with a supporting memorandum where the Court already ordered an answer or other response.

4. However, as a result of the *Greer* decision, the Federal Public Defender's Office is attempting to contact its clients about their *Rehaif*-based Section 2255 Motion to determine if the client consents to its withdrawal. Many clients have already consented to such withdrawal, and their motions have been withdrawn. The Federal Public Defender's Office anticipates that many more of the *Rehaif*-based Section 2255 Motions it filed (which constitutes the majority of *Rehaif*-based Section 2255 Motion filed in this District) will be withdrawn. The Federal Public Defender's Office is working diligently to consult with their clients on this matter but needs additional time to do so. It is believed that such consultations can occur within the next sixty (60) days, and the undersigned counsel for Petitioner agrees to make every effort to do so.

5. If Petitioner consents to withdrawal of his *Rehaif*-based Section 2255 Motion, no further action will be necessary on that motion. In the event Petitioner does not consent to withdrawal, Respondent respectfully requests thirty (30) days in which to file its motion to dismiss Petitioner's *Rehaif*-based Section 2255 Motion and supporting memorandum.

6. Consequently, in the interests of judicial economy and conservation of judicial resources, the parties respectfully request that the Court enter an Order setting the following schedule for addressing Petitioner's *Rehaif*-based Section 2255:

(a) Counsel for Petitioner shall make every effort to file any withdrawal of Petitioner's *Rehaif*-based Section 2255 no later than September 13, 2021;

(b) Respondent's motion to dismiss and supporting memorandum shall be due by October 13 unless Petitioner's motion is withdrawn before then;

(c) Petitioner's response, if any, shall be due within twenty-one (21) days of the filing of Respondent's motion to dismiss;

(d) Respondent's reply, if any, shall be due within fourteen (14) days after Petitioner's response.

7. Contemporaneously herewith the parties are submitting a jointly proposed order consistent with this motion.

Respectfully submitted, this 21st day of July 2021.

G. NORMAN ACKER, III
Acting United States Attorney

JAMES E. TODD, JR.
Federal Public Defender

By: /s/ Asia J. Prince
ASIA J. PRINCE
Attorney for United States of America
Assistant United States Attorney
150 Fayetteville Street, Suite 2100
Raleigh, NC 27601
Telephone: (919) 856-4530
Facsimile: (919) 856-4821
Email: Asia.Prince@usdoj.gov
N.C. Bar #48019

/s/ James E. Todd, Jr.
Federal Public Defender's Office
150 Fayetteville Street, Suite 450
Raleigh, NC 27601
919-856-4236
Email: jay_todd@fd.org

CERTIFICATE OF SERVICE

I do hereby certify that I have this 21st day of July 2021, served a copy of the foregoing upon Petitioner's counsel of record by electronically filing the foregoing with the Court on this date using the CM/ECF system.

BY: /s/ Asia J. Prince

ASIA J. PRINCE

Attorney for United States of America

Assistant United States Attorney

150 Fayetteville Street, Suite 2100

Raleigh, NC 27601

Telephone: (919) 856-4530

Facsimile: (919) 856-4821

Email: Asia.Prince@usdoj.gov

N.C. Bar #48019